

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

UNITED STATES OF AMERICA,
ex rel. JAMES DOGHRAMJI,
SHERRE COOK, and RACHEL
BRYANT,

Plaintiffs,

v.

COMMUNITY HEALTH SYSTEMS,
INC., *et al.*,

Defendants.

CIVIL CASE NO.:
3:11CV00442

CHIEF JUDGE SHARP/
MAGISTRATE JUDGE GRIFFIN

THE UNITED STATES OF AMERICA
and THE STATE OF TEXAS, *ex rel.*
AMY COOK-RESKA,

Plaintiffs,

v.

COMMUNITY HEALTH SYSTEMS,
INC., *et al.*,

Defendants.

CIVIL CASE NO.:
3:14CV02160

CHIEF JUDGE SHARP/
MAGISTRATE JUDGE GRIFFIN

THE UNITED STATES OF AMERICA,
ex rel. KATHLEEN A. BRYANT,

Plaintiffs,

v.

COMMUNITY HEALTH SYSTEMS,
INC., *et al.*,

Defendants.

CIVIL CASE NO.:
3:14CV02195

JUDGE TRAUGER/
MAGISTRATE JUDGE BRYANT

DEFENDANTS' MOTION TO CONSOLIDATE ACTIONS
PURSUANT TO FED. R. CIV. P. 42

Defendants Community Health Systems Professional Services Corporation (“CHSPSC”) and all hospital companies named in the complaints¹ (collectively, “Defendants”) respectfully move to consolidate the following actions pursuant to Federal Rule of Civil Procedure 42:

1. *United States ex rel. Doghramji, et al. v. Community Health Sys., Inc., et al.*, No. 3:11-cv-00442 (“*Doghramji*”);
2. *United States et al. ex rel. Cook-Reska v. Community Health Sys., Inc., et al.*, No. 3:14-cv-02160 (“*Cook-Reska*”).
3. *United States ex rel. Bryant v. Comm. Health Sys., Inc., et al.*, No. 3:14-cv-02195 (“*Bryant*”).

Consolidation is appropriate because the actions involve a common question of law and fact, and consolidation will allow for the most efficient resolution of the actions without unfairly prejudicing any party.

Each of these actions involves a demand for attorneys’ fees and costs arising from allegations that Community Health Systems, Inc. (“CHSI”)-affiliated hospitals engaged in improper Emergency Department (“ED”) admissions in violation of the False Claims Act (“national ED claim”). On July 29, 2014, Defendants entered into a global settlement with the United States to resolve the national ED claim. On September 5, 2014, Relator Amy Cook-Reska filed a petition seeking her attorneys’ fees and costs based on this settlement of the national ED claim. *Cook-Reska*, No. 09-cv-01565 (S.D. Tex.), Dkt. 73. On September 29, 2014, Relators James Doghramji, Sherre Cook, and Rachel Bryant filed a petition seeking their attorneys’ fees and costs based on this settlement of the national ED claim. *Doghramji*, No. 3:11-cv-00442, Dkt. 86. Relator Kathleen Bryant likewise expressed her intent to file a petition seeking attorneys’ fees and costs based on the settlement of the national ED claim. *See Bryant*,

¹ A full listing of the Defendants bringing this motion is set out in Exhibit A.

No. 10-cv-02695 (S.D. Tex.), Dkt. 42-2. However, the False Claims Act (“FCA”) permits—at most—only one relator to recover attorneys’ fees for an FCA claim. *See* 31 U.S.C. § 3730(d). The determination of the attorneys’ fees petition in each of these actions therefore hinges on the same issue—whether the relator(s) seeking fees qualifies as the “first to file” under the FCA.

Defendants moved to transfer the *Cook-Reska* and *Bryant* actions to this Court so that the first-to-file question could be resolved efficiently and uniformly in a single proceeding. *Cook-Reska*, No. 09-cv-01565 (S.D. Tex.), Dkts. 76 & 78; *Bryant*, No. 10-cv-02695 (S.D. Tex.), Dkt. 42.² Defendants also have asked this Court to stay addressing the fee petition in the *Doghamji* action until the related qui tam actions have been transferred and consolidated here. *Doghamji*, No. 3:11-cv-00442 (M.D. Tenn.), Dkt. 83 & 109. Defendants’ motion to stay is still pending before this Court.

On October 30, 2014, the U.S. District Court for the Southern District of Texas granted Defendants’ motion to transfer *Cook-Reska*’s claim for attorneys’ fees and costs arising from the national ED claim to this Court. *Cook-Reska*, No. 09-cv-01565 (S.D. Tex.), Dkt. 106. After extensive briefing of the issue, the *Cook-Reska* court determined that transfer was appropriate to facilitate the efficient resolution of related actions sharing common questions of law and fact:

[D]efendants’ concerted effort to have the related cases in which such [attorneys’ fees] motions are pending transferred and consolidated in the Middle District of Tennessee, Nashville Division, weigh[s] in favor of transfer. Conservation of judicial resources is an important consideration. This factor favors transfer of venue if transfer would enable different cases involving the same parties or issues to be heard in a single forum.

² Defendants have also moved to transfer another related qui tam action where relator Bryan Carnithan intends to seek attorneys’ fees based on the national ED claim. *See Carnithan*, No. 3:11-cv-00312 (S.D. Ill.), Dkt. 51. That motion to transfer is currently pending.

Id. at 17–18. Accordingly, the court granted the motion to transfer Cook-Reska’s fee petition relating to the national ED claim to this Court so that it could be “considered for consolidation and coordination with [*Doghramji*] 3:11-cv-00442 and other related cases.” *Id.* at 20–21.

On November 10, 2014, the U.S. District Court for the Southern District of Texas granted Defendants’ motion to transfer Bryant’s claim for attorneys’ fees and costs to this Court. *Bryant*, No. 10-cv-02695 (S.D. Tex.), Dkt. 49. After noting the court’s finding in *Cook-Reska*, the court held that Bryant’s action should likewise be transferred “[f]or the same reasons.” *Id.* at 2. Mirroring the court’s order in *Cook-Reska*, the *Bryant* court granted the motion to transfer Bryant’s claim for attorneys’ fees and costs related to the national ED claim to this Court “where it may be considered for consolidation and coordination with [*Doghramji*] . . . and other related cases.” *Id.* at 3.

As the *Cook-Reska* and *Bryant* courts concluded, it makes little sense for the same first-to-file analysis to be performed in separate actions. Rather, the interests of judicial efficiency and fairness are plainly furthered by consolidating all of the relators seeking attorneys’ fees based on the national ED claim, so that a first-to-file determination regarding entitlement to attorneys’ fees can be made in a single proceeding with all the relevant claimants participating. Accordingly, Defendants request that *Doghramji*, *Cook-Reska* and *Bryant* be consolidated and that the *Carnithan* case also be consolidated with these actions if it is transferred to this jurisdiction. *See supra* 3 n.2.

CONCLUSION

For the reasons stated above, and to permit an efficient and consistent resolution to a shared question of law and fact, the Court should grant Defendants’ motion to consolidate these actions.

Dated: November 18, 2014

Respectfully submitted,

/s/ William M. Outhier

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served on the following via the Court's ECF filing system:

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